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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,522	10/15/2003	Edward J. Scippi		5245
55499	7590	10/09/2007		EXAMINER
VARIAN MEDICAL SYSTEMS TECHNOLOGIES, INC.			KISH, JAMES M	
c/o BINGHAM MCCUTCHEN LLP			ART UNIT	PAPER NUMBER
THREE EMBARCADERO CENTER				
SAN FRANCISCO, CA 94111-4067			3737	
MAIL DATE		DELIVERY MODE		
10/09/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/687,522	SESSI ET AL.	
	Examiner	Art Unit	
	James Kish	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 4/12/07.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-47 and 56-61 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-47 and 56-61 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-47 have been considered but are moot in view of the new ground(s) of rejection.

However, with respect to the Applicant's arguments regarding Hughes, the Examiner respectfully disagrees. Column 5, lines 55-57 state, "It is also conceivable to rotate the patient through a single wide X-ray beam to record a tomographic image." A tomographic image is inherently three-dimensional. Furthermore, when the patient is rotating the radiation source and detector are in different orientations with respect to the patient.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4-6, 10-13, 18, 22-23, 29-32, 36-40, 44, 56-59 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes et al. (US Patent No. 4,432,370). Hughes discloses producing an x-ray image of a blood vessel by directing synchrotron radiation at first and second selected energy levels through the vessel,

detecting the attenuated radiation and logarithmically subtracting the two signals. Also see column 2, lines 36-45, where digitizing the images is described. Other elements such as samarium or europium can be used as contrast agents (column 5, lines 60-64).

Claims 1, 6-8, 10, 14, 29, 32-36, 39-40, 56-57 and 60-61 are rejected under 35 U.S.C. 102(e) as being anticipated by Acharya et al. (US Patent No. 6,922,462). Acharya discloses a system and method for plaque characterization. The method comprises obtaining a first and second set of image data at a first and second energy level and calculating a third set of image data by subtracting each second pixel element from the corresponding first pixel element (see Abstract). The method may be performed on several imaging modalities (column 4, lines 6-14). See column 4, lines 60-66 concerning different orientations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 15-16, 41-42, 51-52 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. in view of Trauernicht (US Patent No. 5,629,968). Hughes discloses producing an x-ray image of a blood vessel by directing synchrotron radiation at first and second selected energy levels through the vessel,

detecting the attenuated radiation and logarithmically subtracting the two signals. Also see column 2, lines 36-45, where digitizing the images is described. Other elements such as samarium or europium can be used as contrast agents (column 5, lines 60-64). However, there is no discussion of the manner in which the images are initially detected. Trauernicht discloses an apparatus and method for obtaining radiographic images of an object. Figure 3 shows two detectors separated by a beam stop device. The first detector receives the entire radiation dose. The beam stop "deactivates" certain lines of the second detector by not allowing those radiation beams to pass through it. These two images may be combined in registration to provide a composite image of enhanced quality relative to that of the two components (column 5, lines 8-23 and lines 44-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a beam stop, as taught in Trauernicht, in the system of Hughes to prevent certain lines of radiation to proceed to a detector in order to gain a composite image with enhanced quality.

Claims 9, 17, 19-21, 24-28, 43 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes alone. Hughes discloses producing an x-ray image of a blood vessel by directing synchrotron radiation at first and second selected energy levels through the vessel, detecting the attenuated radiation and logarithmically subtracting the two signals. Also see column 2, lines 36-45, where digitizing the images is described. Other elements such as samarium or europium can be used as contrast

agents (column 5, lines 60-64). Column 2, lines 19-23 discusses the use of filters to create different energy levels.

With regard to claims 9, the method of claim 1 relies on images taken of a body while a contrast agent with a known k-edge is present, generating two sets of image data and subtracting the two datasets. There are no features critical to any one imaging modality. Therefore, it would be obvious to one of skill in the art of imaging to use MRI, PET, any beam-shaped x-ray imager, or any other device that produces radiation for imaging.

With regard to claims 17, 19-21, 24-28, 43 and 45-47 it would be obvious to one having ordinary skill in the art to use any one of a plurality of known methods to generate radiation at different energy levels. These would include using different materials for the anodes/targets, filtering the radiation, or varying the voltage used to bombard the anode/target.

Conclusion

See PTO-892 for additional prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Kish whose telephone number is 571-272-5554. The examiner can normally be reached on 8:30 - 5:00 ~ Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMK


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